

AKA: USAO 2011R0672

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

2013 OCT 23 P 2:37

CLERK'S OFFICE

UNITED STATES OF AMERICA

v.

DAVID RAY KELLEY,

Defendant

CRIMINAL NO.

(Conspiracy to Export Arms and  
Munitions, 18 U.S.C. § 371 and 22  
U.S.C. § 2778; Unlawful Export of  
Arms and Munitions, 22 U.S.C. §  
2778(b)(2) and (c))

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INDICTMENT

COUNT ONE

(Conspiracy to Export Arms and Munitions)

The Grand Jury for the District of Maryland charges that:

Introduction

At all times relevant to this Indictment:

1. In furtherance of the security and foreign policy of the United States, the Arms Export Control Act ("AECA") (Title 22, United States Code, Section 2778) authorizes the President of the United States ("the President") to control the export of "defense articles" by designating items, such as military equipment, on the United States Munitions List.
2. The Arms Export Control Act and its attendant regulations, the International Traffic in Arms Regulations ("ITAR") (Title 22, United States Code, Sections 120-130), require a person to apply for and obtain an export license from the Directorate of Defense Trade Controls ("DDTC") of the United States Department of State before exporting arms, ammunition, or articles of war, which are all classified as defense articles, from the United

States. (Title 22, United States Code, Section 2778(b)(2) and 2794(3), and 22 C.F.R. Section 120.1). The ITAR also prohibits the export or attempt to export from the United States of any defense article for which a license or written approval is required. (22 C.F.R. Section 127.1).

3. In the application for an export license, the exporter is required to state, among other things, the nature of the armaments to be exported, the end recipient of the armaments, and the purpose for which the armaments are intended. These factors and others assist the DDTC in determining whether the export of the armaments would further the United States' security and foreign policy interests or would otherwise affect world peace.

4. The defense articles which are subject to such licensing requirements are designated on the Munitions List. Those designations are made by the State Department with concurrence of the Defense Department.

5. Included on the Munitions List are assorted classifications of conventional weapons and night vision and related devices, each of which requires a license from the DDTC before it can be exported from the United States.

6. The AN/PVS-14 is a U.S. Military Generation 3 Monocular Night Vision Device and is a defense article on the Munitions List designed to enable dismounted Soldiers to conduct combat operations at night.

7. The American Technologies Network (ATN) Generation 4 Monocular Night Vision Device, model 6015-4, is a defense article on the Munitions List very similar to the AN/PVS-14. It can be handheld, helmet-mounted for hands-free usage, or adapted to accommodate cameras or video recording devices.

8. The D-760-3AGM Advanced Night Vision Weapon Sight is a Generation 3 Night Vision Device with an integrated aiming reticle and six-power optical magnification. It is a Munitions List item designed to be mounted to a rifle for sharpshooting at night.

9. Other items on the Munitions List include:

- i. Springfield Armory M1A .308 cal. 10 Round Magazine [Part #MA5006]
- ii. Daniel Defense Lower Receiver Parts Kit, Semi-Automatic [Part #DD-21007]
- iii. Sure Fire 60 Round High Capacity Magazine [Part #MAG5-60]
- iv. Wilson Tactical Trigger Unit Single Stage, Semi-Automatic [Part #TR-TTU]
- v. Sig Sauer P226 9mm 15 Round Magazine [Part #MAG-226-9-15]
- vi. PWS Flash Suppressing Compensator 5.56 [Part #FSC556]
- vii. Fail Zero Basic Semi Kit, M16/4 Bolt Carrier Group [Part #009-FZM 16/4-01]
- viii. Springfield Armory M1A .308 cal. 20 Round Magazine [Part #MA5021]
- ix. Mec-Gar Sig P226, 9mm 20 Round Anti-Friction Coated Magazine
- x. MAG SGM T SAIGA AR-15 100 Round Dual Drum Magazine for M16/4
- xi. Glock 17/34 9mm 33 Round Magazine [Part #MF17133]
- xii. Storm Lake, Glock 4.49" Stainless Steel Barrel [Part #GL-17-9MM-449]

10. **DAVID RAY KELLEY** was a United States citizen residing in Texas who ran a business named "Optical Solutions and More" that sold night vision and other military-style items primarily over eBay.

11. On May 3, 2011, **DAVID RAY KELLEY** signed an agreement as part of an application to become a dealer for a night vision device manufacturing company acknowledging

that he was “aware of the restrictions imposed in the Code of Federal Regulations, Title 22, Parts 120-130, commonly referred to as International Traffic in Arms Regulations...[which] govern[s] the export of articles ... on the U.S. Munitions List. All night vision equipment, systems, components, goggles and weapons sights of Generation 2, 2+ and 3 including illuminators, and aimers, are currently identified as U.S. Munitions items.”

12. Coconspirators 1 and 2 were non-U.S. nationals residing in the United Kingdom.

13. Coconspirator 3 was a non-U.S. national residing in the Philippines.

14. Neither **DAVID RAY KELLEY** nor any of his co-conspirators ever sought or obtained a license from DDTC to export Munitions List Items.

#### **The Conspiracy to Violate the Export Control Act**

15. From no later than June 2011 through at least as late as February 2012, in the District of Maryland and elsewhere, the defendant,

#### **DAVID RAY KELLEY,**

did knowingly and willfully combine, conspire, confederate, and agree with others known and unknown to the Grand Jury to willfully export and cause to be exported from the United States defense articles listed on the United States Munitions List, without having first obtained from the Department of State, Directorate of Defense Trade Controls, a license or other written authorization for such export, in violation of Title 22, United States Code, Sections 2778(b)(2) and (c), and Title 22, Code of Federal Regulations, Sections 121.1, 123.1, 127.1(a), 127.1(d), and 127.3.

#### **The Objects of the Conspiracy**

16. It was an object of the conspiracy to illegally enrich conspirators by unlawfully exporting defense articles from the United States.

17. It was further an object of the conspiracy to export from the United States night vision devices and other Munitions List items to customers located outside the United States without obtaining the appropriate license from the DDTC, in violation of the AECA.

#### **The Manner and Means of the Conspiracy**

18. It was part of the conspiracy that either the defendant, **DAVID RAY KELLEY**, would list ITAR controlled night vision devices and other Munitions List controlled items for sale on eBay, or coconspirators would identify such items listed for sale on eBay by third parties based in the United States.

19. It was further part of the conspiracy that the defendant, **DAVID RAY KELLEY**, agreed to buy, and did buy, Munitions List equipment from United States-based vendors for the purpose of reselling that equipment to coconspirators located outside of the United States.

20. It was further part of the conspiracy that the defendant, **DAVID RAY KELLEY**, would falsely state on shipping manifest documents that he was shipping items besides Munitions List equipment in order to escape detection of his shipments by United States authorities.

21. It was further part of the conspiracy that the defendant, **DAVID RAY KELLEY**, would accept payments from his coconspirators made through PayPal accounts associated with eBay.

#### **Overt Acts**

22. In furtherance of the conspiracy and to effect its unlawful purpose, the defendant, **DAVID RAY KELLEY**, and others committed and caused to be committed the following overt acts in the District of Maryland and elsewhere, among others:

a. On or about June 26, 2011, **DAVID RAY KELLEY** communicated by email with Coconspirator 1, whom he knew to be in the United Kingdom, and agreed to obtain newly manufactured Generation 3 ITAR-restricted night vision devices for Coconspirator 1, and further disclosed that he would mislabel the devices during the shipping process as “a defective scope/floor model” to avoid “attention on my side at shipping time.”

b. On or about June 30, 2011, **DAVID RAY KELLEY** accepted PayPal payments totaling \$5,178 from Coconspirator 1 for a D-760-3AGM Advanced Night Vision Weapon Sight and accessories.

c. On or about July 10, 2011, **DAVID RAY KELLEY** communicated by email with Coconspirator 2, whom he knew to be in the United Kingdom, and agreed to bid on his behalf for an AN/PVS-14 Generation 3 Night Vision Device listed on eBay by a seller located in Maryland.

d. On or about July 11, 2011, **DAVID RAY KELLEY** shipped a D-760-3AGM Advanced Night Vision Weapons Sight and accessories to Coconspirator 1 via DHL to an address in the United Kingdom. On shipping documents, **KELLEY** misrepresented the Night Vision Sight as a “Spotting Scope” with a value of \$145.

e. On or about July 11, 2011, **DAVID RAY KELLEY** sent a payment of \$2,307.73 via PayPal to a seller in Maryland for an AN/PVS 14 Generation 3 Night Vision Device he was purchasing on behalf of Coconspirator 2.

f. On or about July 15, 2011, **DAVID RAY KELLEY** accepted delivery of an AN/PVS-14 shipped from Maryland and shipped it to Coconspirator 2 via DHL to an address in the United Kingdom, misrepresenting the contents as “Monocular Parts” rather than a night vision device.

g. On August 18, 2011, Coconspirator 3 in the Philippines sent **DAVID RAY KELLEY** payments of \$207.98 and \$166.19 via PayPal for two Daniel Defense Lower Receiver Parts Kits, Semi-Automatic; and a Storm Lake, Glock 4.49" Stainless Steel Barrel.

h. On August 19, 2011, Coconspirator 3 in the Philippines sent **DAVID RAY KELLEY** payment of \$799.62 via PayPal for various items to include a Fail Zero Basic Semi Kit, M16/4 Bolt Carrier Group.

i. On or about August 23, 2011, **DAVID RAY KELLEY** shipped a Storm Lake, Glock 4.49" Stainless Steel Barrel, along with other items, from Texas to Coconspirator 3 in the Philippines, falsely labeling the shipment as a gift of toys.

j. On or about August 26, 2011, Coconspirator 3, located in the Philippines sent **DAVID RAY KELLEY** payment of \$254 via PayPal for a MAG SGM T SAIGA AR-15 100 Round Dual Drum Magazine for M16/4.

k. On or about August 30, 2011, **DAVID RAY KELLEY** shipped a MAG SGM T SAIGA AR-15 100 Round Dual Drum Magazine for M16/4; a Fail Zero Basic Semi Kit, M16/4 Bolt Carrier Group; and two Daniel Defense Lower Receiver Parts Kits, Semi-Automatic, from Texas to Coconspirator 3 in the Philippines.

l. On or about September 15, 2011, Coconspirator 3 in the Philippines sent **DAVID RAY KELLEY** payment of \$2,038 via PayPal for various items to include a PWS Flash Suppressing Compensator 5.56 mm; a Wilson Tactical Trigger Unit Single Stage, Semi-Automatic; two Glock 17/34 9mm 33 Round Magazines; and a Fail Zero Basic Semi Kit, M16/4 Bolt Carrier Group.

m. On or about September 21, 2011, **DAVID RAY KELLEY** shipped a PWS Flash Suppressing Compensator 5.56 mm; a Wilson Tactical Trigger Unit Single Stage,

Semi-Automatic; two Glock 17/34 9mm 33 Round Magazines; and a Fail Zero Basic Semi Kit, M16/4 Bolt Carrier Group from Texas to Coconspirator 3 in the Philippines.

n. On September 30, 2011, Coconspirator 3 in the Philippines sent **DAVID RAY KELLEY** payment of \$2,923 via PayPal for various items to include six Springfield Armory M1A .308 cal. 10 Round Magazines; two Mec-Gar Sig P226, 9mm 20 Round Anti-Friction Coated Magazines; two Sig Sauer P226 9mm, 15 Round Magazines; a Wilson Tactical Trigger Unit Single Stage, Semi-Automatic; and three Daniel Defense Lower Receiver Parts Kits, Semi-Automatic.

o. On or about October 6, 2011, **DAVID RAY KELLEY** shipped six Springfield Armory M1A .308 cal. 10 Round Magazines; two Mec-Gar Sig P226, 9mm 20 Round Anti-Friction Coated Magazines; two Sig Sauer P226 9mm, 15 Round Magazines; three Daniel Defense Lower Receiver Parts Kits, Semi-Automatic; a Wilson Tactical Trigger Unit Single Stage, Semi-Automatic, and other articles from Texas to Coconspirator 3 in the Philippines, falsely labeling the shipment as "toy blocks."

p. On October 14, 2011, Coconspirator 3 in the Philippines sent **DAVID RAY KELLEY** payment of \$235 via PayPal for a PWS Flash Suppressing Compensator 5.56 mm.

q. On or about November 4, 2011, **DAVID RAY KELLEY** shipped a PWS Flash Suppressing Compensator 5.56 mm from Texas to Coconspirator 3 in the Philippines.

s. On November 20, 2011, Coconspirator 3 in the Philippines sent **DAVID RAY KELLEY** payment of \$1,114 via PayPal for various items to include a Daniel Defense Lower Receiver Parts Kit, Semi-Automatic; three Springfield Armory M1A .308 cal. 20 Round Magazines; and six Sure Fire 60 Round High Capacity Magazines.



t. On or about November 23, 2011, **DAVID RAY KELLEY** shipped three Springfield Armory M1A .308 cal. 20 Round Magazines; a Daniel Defense Lower Receiver Parts Kit, Semi-Automatic; and six Sure Fire 60 Round High Capacity Magazines from Texas to Coconspirator 3 in the Philippines.

18 U.S.C. § 371

22 U.S.C. § 2778(b)(2) and (c)

**COUNT TWO**

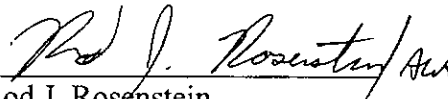
The Grand Jury for the District of Maryland further charges that:

1. Paragraphs 1 through 14 and 16 through 21 of Count One are incorporated herein as if fully set out.
2. On or about October 24, 2011, in the District of Maryland and elsewhere, the defendant,

**DAVID RAY KELLEY,**

did knowingly and willfully export from the United States to New Zealand an ATN Generation 4 Monocular Night Vision Device, model 6015-4, which is a designated defense article on the United States Munitions List, without having first obtained from the Department of State the required license for such export.

22 U.S.C. §§ 2778(b)(2) and (c)  
22 C.F.R. §§ 121.1, 123.1, 127.1(a), 127.1(d), and 127.3.

  
Rod J. Rosenstein  
United States Attorney

A TRUE BILL:

**SIGNATURE REDACTED**

✓ For person

10-23-2013  
Date